

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-206655-D2 AND ALL  
OTHER SEAMAN'S DOCUMENTS

Issued to: John Francis SCULLY

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1894

John Francis SCULLY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 13 May 1971, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for six months upon finding him guilty of misconduct. The specifications found proved allege that while serving as an AB SEAMAN on board SS NORWALK under authority of the document captioned, on or about 18 August 1969, Appellant:

- (1) assaulted and battered the master of the vessel;
- (2) threatened with bodily harm the master of the vessel;
- (3) used foul and abusive language to the master of the vessel.

At the hearing, Appellant did not appear. The Administrative Law Judge entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the logbook and shipping articles of the NORWALK and testimony of the master and chief engineer.

Although the Appellant did not appear in defense the Administrative Law Judge called as witness for the person charged the boatswain of NORWALK.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and first two specifications had been proved and the third specification proved in part. He then entered an order suspending all documents issued to Appellant for a period of six months.

The entire decision was served on 20 May 1971. Appeal was

timely filed on 15 June 1971. A brief in support of appeal was filed on 21 July 1971. Although Appellant had until 8 September 1971 to add to his appeal he has not done so.

#### FINDINGS OF FACT

On 18 August 1969, Appellant was serving as an AB Seaman on board SS NORWALK and acting under authority of his document.

The voyage of the NORWALK commenced at Gulfport, Mississippi on 20 May 1969, at which time Appellant signed the shipping articles. On 17 August 1969 the NORWALK arrived at Kaohsung, Taiwan, where the vessel was sold for scrap. The entire crew departed the vessel at Kaohsung and went to a hotel to await repatriation to the United States at company expense. On 18 August 1969 the crew was flown to Taipei for a connecting flight to the United States. The airplane arrived at Taipei Airport at about 1230 where the crew departed for the airport waiting room. As the master and chief engineer were walking from the airplane to the terminal the Appellant approached the master and said "I'm going to get you, you son of a bitch. You're just a dirty no good son of a bitch. I'm going to get you in Frisco." The Appellant started to leave but then returned and struck the master on the chin. The crew was then flown to Tokyo, Japan, where they connected with a flight to the United States. On 19 August 1969 the crew appeared before the shipping commissioner in San Francisco where they obtained payment of wages through 19 August 1969 and were released from articles.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the Coast Guard lacks jurisdiction in this case since on 18 August 1969 Appellant had been released from articles and was no longer acting under the authority of his certificate.

APPEARANCE: Kaplan, Latti and Flannery of Boston, Mass. by  
Thomas Hunt, Esq. of Counsel.

#### OPINION

The Coast Guard's jurisdiction under 46 U.S.C. 239 is not predicated on the Appellant's serving under shipping article. Appellant is subject to proceedings under 46 U.S.C. 239 if, at the time of his alleged misconduct, he is "acting under the authority of his license or certificate." Jurisdiction under 46 U.S.C. 239 is at least co-extensive with the court's jurisdiction in a maintenance and cure action under the theory of Aquilar v Standard;

(318 US 724). Commandant Decision on Appeal No. 361. It stands to reason, that if a seaman is considered "in the service of a ship" for maintenance and cure, or "in the course of employment" for the Jones Act, while ashore from a vessel on which he may serve only if licensed or certificated by the Coast Guard he will be subject to disciplinary proceedings under 46 U.S.C. 239.

## II

Although a seaman "acting under the authority of his license or certificate" is usually serving under shipping articles, it is not true that he must be under shipping articles to be acting under the authority of his document. The paramount factors to be considered in determining whether Appellant is "acting under the authority of his license or certificate" are, 1) was the license or certificate necessary for employment and, 2) if so, was Appellant acting "in the service of the ship" or "in the course of his employment" when the alleged act of misconduct occurred.

## III

Appellant was employed on NORWALK as a certified able bodied seaman. At the time of the incident with the master at the Taipei Airport Appellant was being returned with the rest of the NORWALK's crew, at company expense, to San Francisco to be paid off before the shipping commissioner as required by law. Appellant continued to draw salary as an able bodied seaman until 19 August 1969. On these facts, I have no hesitancy in concluding that Appellant was acting under authority of his document and "in the service of his ship" when he struck the master on 18 August 1969.

## ORDER

The order of the Administrative Law Judge dated at San Francisco, California on 13 May 1971, is AFFIRMED.

C. R. BENDER  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 19th day of October 1972.

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